

RAILWAYS (AMENDMENT) BILL 1978.

EXPLANATORY MEMORANDUM.

The Bill contains provisions for :

- validation of the construction of the Maribyrnong River Branch Railway and the Warrnambool Pier Railway ;
- dismantling of a number of railways that are closed to traffic ;
- reduction of the minimum qualifying period for entitlement to payment in lieu of long service leave to redundant railway employees ;
- the Railway Construction Board to lease and sell land ; and
- simplification of the reporting of railway accidents to the Minister.

Clause 1. Short Title and Commencement.

Clause 2 validates the construction of the Maribyrnong River Branch Railway and the Warrnambool Pier Railway and also empowers the Victorian Railways Board to use certain lands for the purpose of electrifying or maintaining the Maribyrnong River Branch Railway.

Clause 3 provides for the removal of the following sections of railways, details of which are set out in the Second Schedule, and for the disposal of materials, property and lands other than Crown lands :—

<i>Railway</i>	<i>Date Traffic Ceased</i>
The Echuca Wharf section of the Melbourne to the River Murray Railway ..	6.2.68
Kooloonong to West Narrung Railway	6.8.57
Maldon and Laanecoorie Railway	1.1.70
Meringur to Morkalla Railway	31.12.63
Portion of the Rushworth to Stanhope North Railway	1.3.75
Spring Vale Cemetery Railway	Not known
Portion of the Warrnambool Pier Railway	Not known
Welshpool Jetty Rail or Tramway	1.1.41

Clause 4 provides for the divesting of former Crown lands after the removal of the railways, and the saving of existing leases.

Clause 5 makes provision to release the Railways from any liability they may have to maintain any road, bridges, culverts, drains or stream diversions pertaining to the said sections of railways.

Clause 6 makes provision to release the Railways from liability for fencing of the sections of railways.

Clauses 7 and 8 contain provisions regarding the removal and sale of bridges on the said sections of railways and the release of the Railways from the responsibility for these bridges.

Clause 9 exempts the Railways from the provisions of the *Sale of Lands Act 1962* to overcome the difficulties that could arise in providing plans of subdivision before entering into negotiations with adjoining land owners and others for the disposal of this land.

Clause 10 provides for the inclusion of a section of the Spring Vale Cemetery Railway in the Springvale station ground and a section of the Warrnambool Pier Railway in the Warrnambool station ground.

Clause 11 amends section 187 of the *Railways Act 1958* to reduce from ten to four years the minimum period of employment for entitlement to *pro rata* payment in lieu of long service leave where the services of an officer or employé are terminated on the grounds of redundancy.

And whereas by the Acts specified in the second column of Part A of the Second Schedule authority was given for the making and maintaining of the railways referred to in the first column of Part A of the Second Schedule and those railways were duly constructed and opened for traffic but since the dates specified in the fourth column of the said Part of the said Schedule no traffic has been conducted on the railways or sections of railways referred to in the fifth column of the said Part of the said Schedule :

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And whereas the lands upon which those railways were constructed or which were acquired for the purposes thereof and all property being in or upon the said lands or used in connexion therewith are vested in the Board :

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And whereas some of the said railways and sections of railways have been removed and the materials sold disposed of or used and it is expedient to validate the removal sale disposal or use :

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And whereas it is expedient to authorize the Board to complete the removal of any of those railways and to sell or otherwise dispose of or use the materials and to sell or demise or grant easements over the said lands (other than the former Crown lands) and to deal with the proceeds thereof :

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And whereas parts of the said lands (which parts are hereinafter called the " former Crown lands ") are lands—

(a) which immediately prior to their use for railway purposes were unalienated lands of the Crown (including parts of Government roads) or lands held under lease from the Crown ; and

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(b) which have never been granted in fee simple to any person :

And whereas it is expedient to divest the former Crown lands out of the Board and to provide that those lands shall again be and be deemed to be unalienated lands of the Crown :

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And whereas it is expedient to determine the liability (if any) of the Board to maintain any bridge bearing any road over any of the said railways or sections of railways or any culvert drain or stream diversion appurtenant to the said railways or sections of railway :

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And whereas it is expedient that a section of the Spring Vale Cemetery Railway referred to in the Third Schedule should become part of the Springvale station ground and that a section of the Warrnambool Pier Railway referred to in the Third Schedule should become part of the Warrnambool station ground :

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And whereas it is expedient to make certain amendments to the *Railways Act* 1958 in relation to payment in lieu of long service leave, the powers of the Railway Construction Board and the investigation of accidents :

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

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1. (1) This Act may be cited as the *Railways (Amendment) Act 1978*. Short title.
- (2) In this Act the *Railways Act 1958* is called the Principal Act. Principal Act, No. 6355.
- 10 (3) This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
2. (1) The railways described by plan in the First Schedule to this Act including all land (other than lands vested in the Melbourne Harbor Trust Commissioners) and parts of roads acquired or taken for the purpose of such railways shall be and be deemed always to have been absolutely vested in the Board in fee simple for the purposes of the said railways and maintained by the Board pursuant to the Railways Acts. First Schedule.
- 15 (2) The Board shall have and shall be deemed always to have had the right to use for the purposes of the Maribyrnong River Branch Railway those lands vested in the Melbourne Harbor Trust Commissioners on which parts of the said Maribyrnong River Branch Railway are constructed.
- (3) For the purposes of electrifying (including the erection thereon of over-head structures) or maintaining the Maribyrnong River Branch Railway the Board may by its servants and agents and with such equipment as is necessary enter upon and use such adjoining lands of the Crown or of the Melbourne Harbor Trust Commissioners as are necessary.
- 25 (4) Before so entering upon such lands of the Melbourne Harbor Trust Commissioners the Board shall give prior notice of its intention to so enter, do as little damage as possible and make good any damage caused by such entering.
- 30 3. (1) Notwithstanding anything to the contrary in any other Act the Board may—
- 35 (a) remove the sections of the railways referred to in the fifth column of Part A of the Second Schedule ; Second Schedule, Part A.
- (b) sell or otherwise dispose of or use for any purpose under Part III. of the Principal Act—
- 40 (i) the materials of which the said sections of railways are constructed or any portion thereof ; and
- (ii) any property in or upon the said lands or any portion thereof ; and
- (c) sell

(c) sell demise and grant easements over the said lands or any portion thereof other than the former Crown lands.

(2) The net proceeds of any sale or disposal of the said materials or of the said property or any portion thereof pursuant to this section shall be paid into the Railways Renewals and Replacements Funds. 5

(3) The net proceeds of any sale of lands pursuant to this section shall be paid into the Consolidated Fund.

4. After any part of the railways or sections of railways referred to in the fifth column of Part A of the Second Schedule which are situated on former Crown lands have been removed, the former Crown lands shall be divested out of the Board and shall again be and be deemed to be unalienated lands of the Crown but any lease of the former Crown lands that was granted by the Board or The Victorian Railways Commissioners before the commencement of this Act shall operate and have effect as if it were a lease of Crown lands granted by the Minister of Lands and shall be read and construed accordingly. 10 15

Determination of liability of Board to maintain road, bridges, culverts, &c.

5. On the commencement of this Act the liability (if any) of the Board to maintain any bridge bearing any road over the said railways or sections of railways or any culvert drain or stream diversion appurtenant to the said sections of railways shall absolutely cease and determine. 20

6. (1) The *Fences Act* 1968 (other than sections 12 and 23) shall not apply to so much and such portions of the lands which may be sold or demised pursuant to the provisions of this Act as are for the time being not so sold or demised and the Board shall not be liable to make any contribution under that Act towards the construction or repair of any dividing fence between any such land and the land of any occupier. 25 30

(2) For the purposes of sections 12 and 23 of the *Fences Act* 1968 so much and such portions of the lands which may be sold or demised pursuant to the provisions of this Act as are for the time being not so sold or demised shall be deemed to be unalienated lands of the Crown. 35

Partial demolition deemed to be removal of bridge.

7. Where the superstructure is removed from a bridge (other than a bridge over a roadway) forming part of the railways or sections of railways authorized by this Act to be removed the bridge shall for the purposes of this Act be deemed to be completely removed : 40

Provided

Provided that where any part of a timber bridge is situated in the bed of a river or stream under the control of some body established by or under an Act of Parliament for a public purpose the bridge shall be deemed to be completely removed when the
 5 parts thereof so situated have been demolished to such extent as is agreed upon by the Board and that body or in default of agreement as is determined by the Governor in Council.

8. (1) Any bridge, rails or other property which the Board is authorized to sell pursuant to the provisions of this Act may be
 10 sold *in situ* subject, in the case of a bridge, rails or other property situated on former Crown lands, to the consent of the Minister of Lands being first obtained and, in the case of a bridge situated over a river or stream under the control of some body established by or under an Act of Parliament for a public purpose, to the
 15 consent of that body being first obtained.

(2) Any bridge, rails or other property shall upon being sold *in situ* pursuant to the provisions of this section be deemed for the purposes of this Act to have been removed and the Board shall have no further responsibility in relation thereto.

20 9. Notwithstanding anything to the contrary in any Act, the provisions of the *Sale of Land Act* 1962 shall not apply to the sale by the Board of any lands authorized by this Act to be sold.

10. The lands comprising the sections of railways described in the second column of the Third Schedule shall be deemed to be
 25 part of the lands taken or acquired for the purposes of the Springvale station ground on the Gippsland Railway and the Warrnambool station ground on the Camperdown to Terang and Warrnambool Railway.

11. In section 187 (2) of the Principal Act, for paragraph (d)
 30 there shall be substituted the following paragraph :—

“(d) the services of an officer or employé are terminated on the grounds of redundancy.”

12. After section 47 of the Principal Act there shall be inserted the following section :—

35 “48. (1) Notwithstanding anything to the contrary in any Act the Railway Construction Board may with respect to any land vested in the Board for the purpose of constructing any line of railway which Parliament has authorized or may hereafter authorize to be constructed grant leases for any term of years at such rent and subject
 40 to such conditions as the Board thinks fit and may do so notwithstanding that the land may be land which was granted to the

Board to be used for a particular purpose or land that is temporarily or permanently reserved for any purpose under the *Land Act* 1958 or any previous Act relating to Crown lands.

(2) The Board may with the consent of the Governor in Council sell any land vested in the Board in respect of which the Board has a freehold title and which is no longer required for railway purposes. 5

(3) The proceeds of a sale and the net proceeds of the leasing of any land under this section shall be paid by the Board into the Consolidated Fund.

(4) For the purposes of any sale or lease under this section the Board may execute any and every deed instrument and document which may be deemed necessary or expedient. 10

Amendment of
No. 6355,
New s. 135.

13. (1) For section 135 of the Principal Act there shall be substituted the following section :—

“ 135. Where in or about any railway or works or buildings connected with any railway or any building or place whether open or enclosed used in working any railway any of the following accidents takes place in the course of working any such railway (that is to say):— 15

(a) Any accident attended with loss of life ; 20

(b) Any collision where one of the trains is a passenger train ;
or

(c) Any passenger train or any part of a passenger train accidentally leaving the rails—

the Board shall— 25

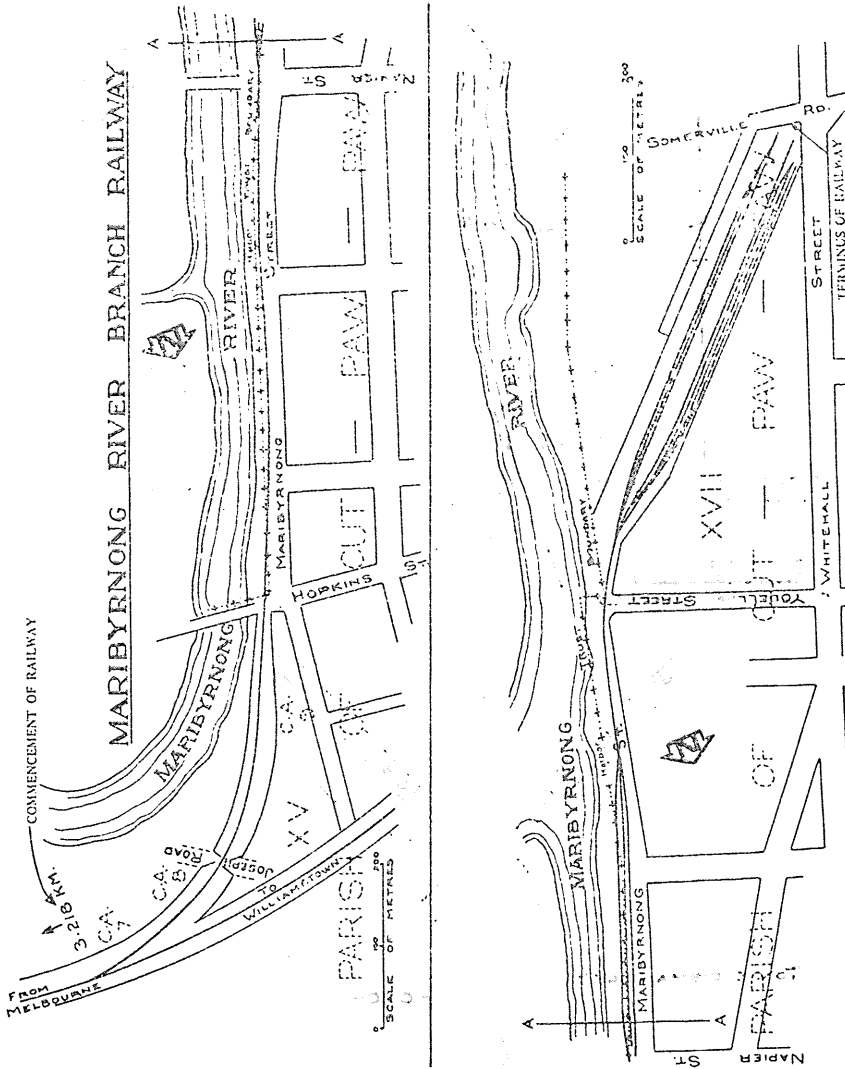
cause the Minister to be informed of the occurrence of any of the above ; and

if requested by the Minister furnish to him a report thereon.”

(2) In section 136 of the Principal Act for the words “ either before or after the commencement of any such inquiry that a more formal investigation of the accident and of the causes thereof, and of the circumstances attending the same ”, there shall be substituted the words “ that an investigation under this Division ”. 30

SCHEDULES.
FIRST SCHEDULE.

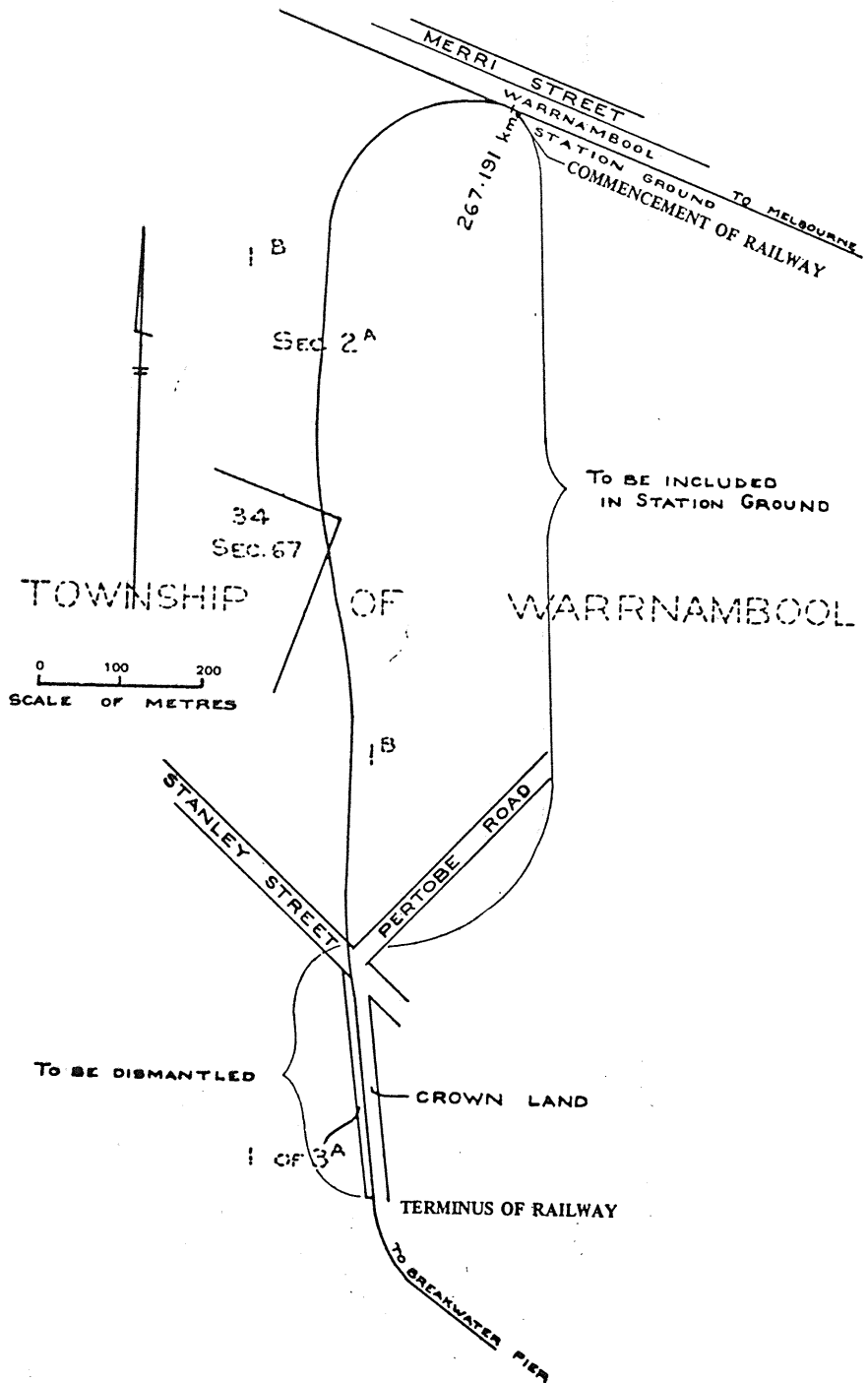
S. 2.



FIRST

FIRST SCHEDULE—continued.

WARRNAMBOOL PIER RAILWAY



SECOND SCHEDULE.
PART A.
RAILWAYS AND SECTIONS OF RAILWAYS WHICH ARE DISMANTLED OR PARTIALLY DISMANTLED
OR ARE TO BE DISMANTLED.

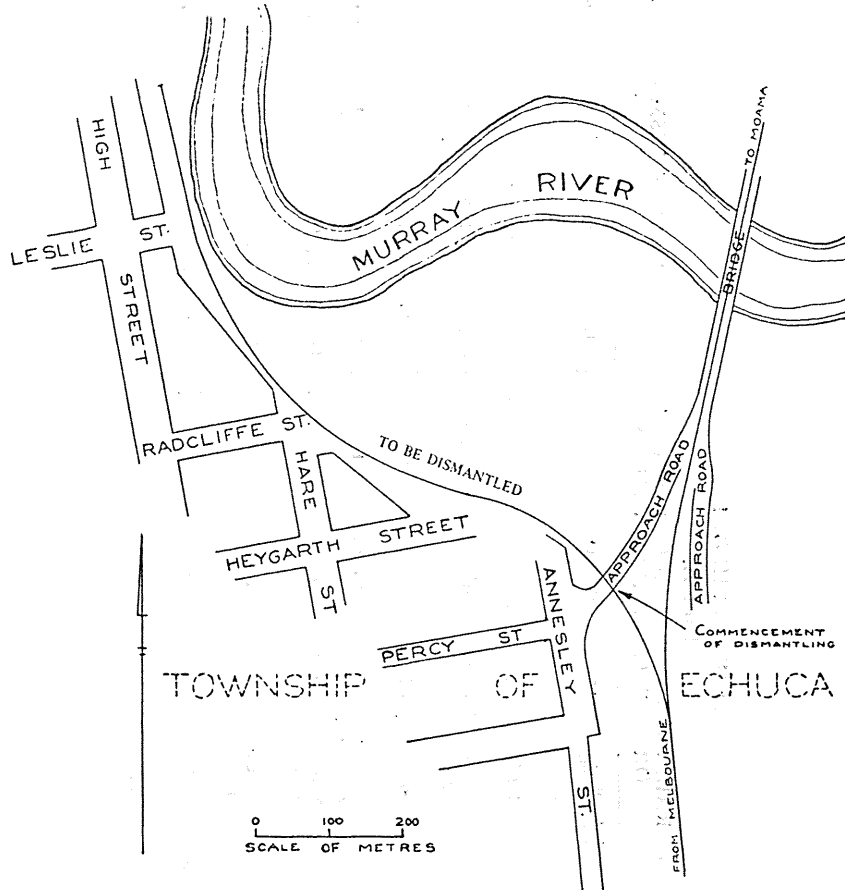
Name of Railway.	Act or Enactment Authorizing Construction.	Date Opened for Traffic.	Date Traffic Ceased.	Section To Be Dismantled.
Melbourne to the River Murray Railway	<i>Main Trunk Line Act 1857 (No. 35)</i>	19th September, 1864	6th February, 1968	See Part B of this Schedule
Kooloonong to West Narrung Railway	<i>Kooloonong to West Narrung Railway Construction Act 1923 (No. 3318)</i>	29th March, 1926 ..	6th August, 1957 ..	The whole railway
Maldon and Laanecoorie Railway	<i>The Railway Construction Act 1884 (No. 821)</i>	24th March, 1891 ..	1st January, 1970 ..	The whole railway
Meringur to Morkalla Railway ..	<i>Meringur to Morkalla Railway Construction Act 1930 (No. 3862)</i>	16th June, 1931 ..	31st December, 1963	The whole railway
Rushworth to Stanhope North Railway	<i>Rushworth to Stanhope North Railway Construction Act 1915 (No. 2754)</i>	15th May, 1917 ..	1st March, 1975 ..	See Part B of this Schedule
Spring Vale Cemetery Railway ..	<i>Spring Vale General Cemetery Act 1901 (No. 1763)</i>	7th February, 1904 ..	Not known	See Part B of this Schedule
Warrnambool Pier Railway	4th February, 1890 ..	Not known	See First Schedule
Welshpool Jetty Rail or Tramway	<i>Welshpool Jetty Rail or Tramway Construction Act 1904 (No. 1911)</i>	26th June, 1905 ..	1st January, 1941 ..	The whole railway

S. 3 (1) (a).

SECOND SCHEDULE—continued.

PART B.

MELBOURNE TO THE MURRAY RIVER RAILWAY

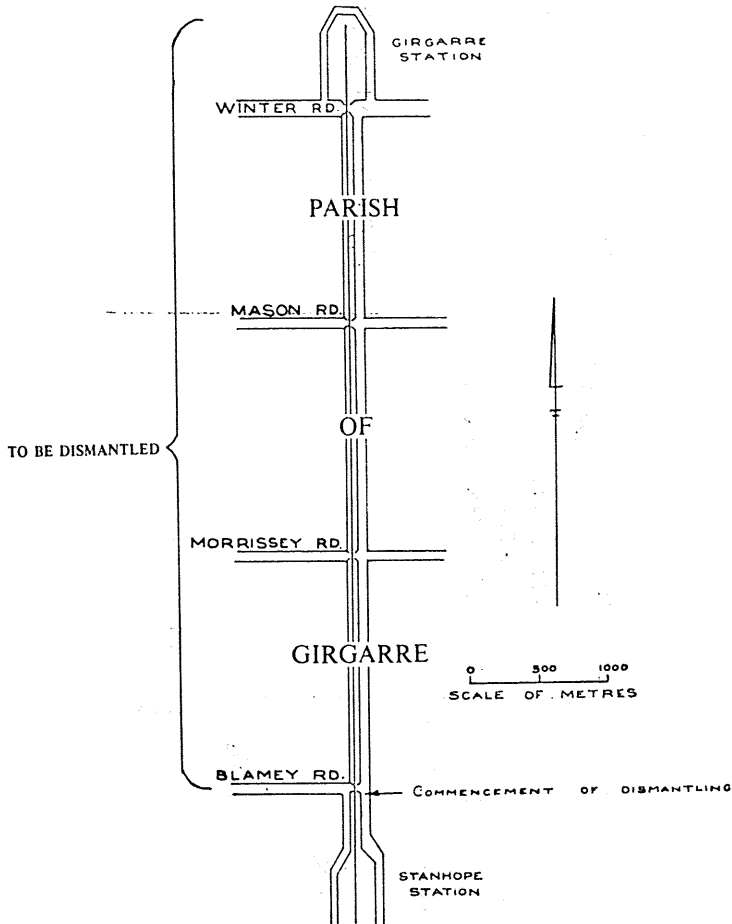


SECOND SCHEDULE—continued.

PART B.

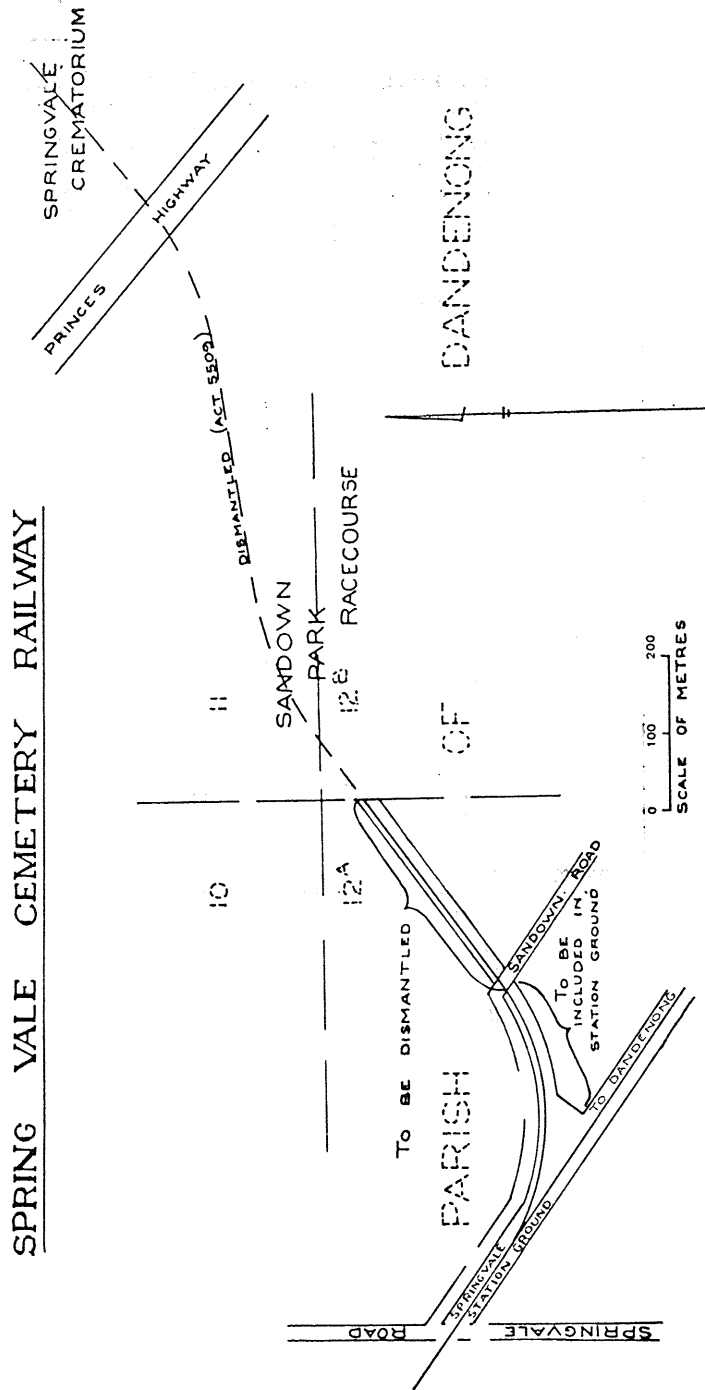
RUSHWORTH TO STANHOPE NORTH RAILWAY

PARISH OF KYABRAM



SECOND SCHEDULE—continued.

PART B.



THIRD SCHEDULE.

S. 10.

SECTIONS OF RAILWAYS TO BE DEEMED TO BE PART OF
STATION GROUNDS.

Name of Railway.	Section To Be Part of Station Ground.	Name of Station Ground.	Name of Railway Station Ground Is Part of.
Spring Vale Cemetery Railway	See Part B of the Second Schedule	Springvale	Gippsland Railway
Warrnambool Pier Railway	See First Schedule . .	Warrnambool	Camperdown to Terang and Warrnambool Railway

LEGISLATIVE COUNCIL

RAILWAYS (AMENDMENT) BILL.

(Amendments to be proposed in Committee by the Honorable D.R. White.)

Clause 2, sub-clauses (3) and (4), omit these sub-clauses.

Clause 3, sub-clause (3), page 4, line 9, omit "Consolidated Fund"
and insert "Railways Renewals and Replacements Funds".

Clause 12, page 6, line 9, omit "Consolidated Fund" and insert
"Railways Renewals and Replacements Funds".